
(1995) 03 RAJ CK 0045
In the Rajasthan High Court
Case No : Civil Special Appeal No. 160/95

Nirmal Nahar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Co-operative Societies Act, 1965 — Section 19

Citation : AIR 1995 Raj 198 : (1995) 2 WLC 632 : (1995) 1 WLN 320

Hon'ble Judges : R.R. Yadav, J; P.P. Naolekar, J

Bench : Division Bench

Advocate : K.N. Joshi, for the Appellant; M.R. Singhvi, Sangeet Lodha, for the Respondent

Final Decision : Dismissed

Judgement

P.P. Naolekar, J.—This special appeal is filed against the order of learned single Judge passed in S.B. Civil Writ Petition No. 5381/94 on 7-2-1995.

Brief facts necessary for adjudication of the question involved in this appeal are that the appellant along with 475 persons applied for membership of Jodhpur Nagrik Sahkari Bank Ltd. (for short "the Bank"). According to the appellant, he along with 475 members after completing all the necessary formalities and depositing the requisite fees and share money, applied for the membership complying the rules prescribed, for membership. On 5-2-1994, the Board of Directors of the Bank held its meeting, considered the applications and by unanimous decision, accepted all the applications and made them members. In the list of the members, which are newly added to the membership, the appellant's name is at S. No. 448.

2. Respondent No. 4 was appointed as Election Officer for conducting the elections of the Bank, has published the election programme for the election of Board of Directors and other office bearers. The programme was published in the newspaper Rajasthan Patrika. Names of 475 members inducted vide meeting

dated 5-2-1994 was not included in the voters' list. Number 6f objections were filed for non-inclusion of 475 voters. The objections of the appellant for non-inclusion of his name along with 475 members were rejected by the Election Officer. One of the member, who was inducted in the meeting dated 5-2-1994 had initiated proceedings before the Deputy Registrar, Cooperative Department, Jodhpur, u/s 19 of the Rajasthan Co-operative Societies Act, 1965 (for short "the Act") for non-inclusion of his name in the voters list published by the Election Officer, respondent No. 4, and prayed that he be permitted to participate in the election. Directions were issued for inclusion of his name as a member by the Deputy Registrar. Thus, in nutshell, the appellant's case is that in the meeting held on 5-2-1994 of the Executive Committee, he was inducted along with 475 persons as a member of the Bank and the names could not have been deleted from the voters list. They have a right to vote and to participate in the election. It is further alleged that in the meeting held, of the Executive Committee on 2-3-1994 the resolution accepting the persons as members dated 5-2-1994, was set aside. It is directed that the membership forms be scrutinised and placed before the Executive Committee. Although it was resolved in the meeting dated 2-3-1994, that enquiry be made of the membership forms, but nothing was done and thus, the resolution passed in the meeting dated 5-2-1994 automatically comes into operation. The members inducted in the meeting dated 5-2-1994 are entitled to participate in the election and inclusion of their names as members. On these allegations, a direction was sought from the Court that the respondents be directed to allow the members referred in Annex. 1 to participate in the election, scheduled to be held on 26-11-1994 or on any other date.

3. Respondent No. 2 the Jodhpur Nagrik Sahkari Bank and respondent No. 1 filed their separate returns. The points raised in them are more or less similar. According to the respondents, the writ seeking the relief that the persons whose names appear in the list Annex. I with the writ petition, be declared as members of the respondent-Bank and they be allowed to participate in the election, are the disputed questions of fact. Preparation of voters list for election of the members of the Board of Directors of Co-operative Society is a part of election process, the dispute relating to the legality of the voters list is a dispute relating to and connected with the election and such a dispute can only be properly adjudicated by competent authority u/s 75 of the Act. Therefore, the appellants have adequate, efficacious alternative remedy and the Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. If it is taken that the membership has been rejected and the reasons are not indicated to the persons concerned, they have their remedy of filing an appeal u/s 19 of the Act to the Registrar. The meeting of the Board of Directors of the respondent-Bank held on 5-2-1994 is void ab initio for want of quorum and requisite period of notice, therefore, the persons who have been inducted as members in that meeting, cannot be treated as a member of the respondent-Society. The meeting of the Board of Directors was scheduled on 2-3-1994 and the resolution inducting members in the meeting dated 5-2-1994 was cancelled. The minutes of the

meeting of 2-3-1994 were confirmed in the meeting held on 30-3-1994 and 161 members out of 475 members, have been given membership of the Society on scrutiny of their applications. Thus according to the respondents, the appellant has an alternative remedy under the Rajasthan Cooperative Societies Act either u/s 75 or u/s 19 of the Act and that the induction of the members in the meeting of 5-2-1994 was bad, illegal and without authority as the holding of the meeting and passing of the resolution was per se illegal and without authority of law, which had been rightly set aside in the subsequent meeting held on 2-3-1994 and confirmed in the meeting held on 30-3-1994.

4. After filing of the petition, the learned single Judge had passed an interim order on 12-12-1994 whereby the persons, who had been given membership in the meeting of 5-2-1994, were permitted to exercise their right of vote in separate ballot box. Their votes to be kept separate and the result of the election not be announced. As a result thereof, the persons who have been inducted as members in the meeting held on 5-2-1994 had cast their votes and votes are kept in a separate ballot box. The result of the election has not been declared so far as the matter is pending consideration.

5. The learned single Judge by his order dated 7-2-1995 has dismissed the petition as indicated above. The learned single Judge was of the opinion that the petitioner has an alternative remedy u/s 75 of the Rajasthan Co-operative Societies Act, 1965, that certain material facts have been suppressed. The meeting held on 5-2-1994 was not in accordance with law. There was no quorum in the meeting held on 5-2-1994. That the resolution passed in the meeting dated 5-2-1994 was validly rescinded in a subsequent meeting dated 2-3-1994 of the Board of Directors. No right of membership accrues to the persons on the basis of resolution passed in the meeting dated 5-2-1994. The meeting held on 5-2-1994 was illegal and void ab initio.

6. The question of alternative remedy u/s 75 of the Act loses its importance because of the matter being heard by the learned single Judge and by us on merits and thus, we do not propose to say anything in the matter in respect thereof.

7. The primary controversy which requires consideration in this case is whether the Board of Directors has jurisdiction to revoke and rescind the resolution inducting the members in the meeting held and then whether meeting dated 5-2-1994 was legally convened and business in the meeting was validly transacted on 5-2-1994.

8. In the context of the facts and circumstances of the case, it is necessary to determine whether there is a power to revoke or modify the decision taken by the Board of Directors on 5-2-1994 by the same body in subsequent meeting. The question here is whether the Committee itself has a power to do this, which is different from the question whether some other authority has power to do the same, which may be effected by statutory provision. It may be possible and in

our opinion may be lawful that the Board of Directors by itself may correct accidental mistake or a decision arrived at on the basis of fraud played but can the same be said about the decision taken in the exercise of the powers vested in the Board of Directors. In this light, it will be fruitful to refer to Section 19(2) and second proviso to Sub-section (2) of Section 19 and Sub-section (3)(i) and (ii) of the Act, which are:--

"Section 19. Persons who may become members.--(1)

(2) An application for admission as a member of a co-operative society shall lie to the Committee of that co-operative society. Such committee shall decide the application and communicate its decision to the applicant within a period of 30 days from the receipt of the application, and where the application is refused, it shall also be necessary for the committee to communicate to the applicant, the reasons for such refusal, within the said period:

Provided further that the Registrar, of his own motion or on a complaint made by the committee of the society concerned or by any aggrieved person, may, notwithstanding anything to the contrary contained in this Act, order for the removal of the person admitted to such membership, if, after giving to such person an opportunity of being heard against the proposed removal and for reasons to be recorded by the Registrar, he is not eligible to be a member of such society and every such order, in the case of a complaint made by the committee of the society or by any aggrieved person, shall be passed within thirty days of the receipt of the complaint by him.

(3) If the committee-

(i) refuses the application for admission as a member, an appeal shall lie against such refusal to the Registrar; or

(ii) fails to communicate its decision or the reasons of refusal under Sub-section (2) within the time specified therein, the applicant may, within a period of sixty days for the expiration of such time, move the Registrar for the decision of his application:

9. Sub-section (1) of Section 19 of the Act is in respect of the qualifications required to become the member of a society. Sub-section (2) imposes a duty on the committee of the co-operative society that on any application made for the membership, a decision shall be taken within a period of thirty days from the receipt of the application and where the committee refuses the membership to the applicant, it shall be necessary for the committee to communicate the reasons for such rejection of his application within thirty days. Second proviso to Sub-section (2) of Section 19 provides that the Registrar, on his own motion or on a complaint made by the committee of the society concerned or by any aggrieved person, notwithstanding anything to the contrary contained in the Act, may pass order for the removal of the person admitted to membership, after giving such person an opportunity of being heard against the proposed removal

and such orders shall be passed within thirty days from the receipt of the complaint by the committee or society or by any aggrieved persons. Sub-section 3(i)(ii) provides an appeal to the Registrar on refusal of an application for admission as a member or deemed rejection of application which shall be deemed to have been refused on noncommunication of the refusal within thirty days of the date of application.

10. Thus, the scheme of Section 19 contemplates that the Board shall have the power to induct a member or refuse membership but once the member is inducted, the power to remove such member vests within the Registrar, who can exercise that power after hearing the member and by a reasoned order passed, within thirty days, of the receipt of the complaint by the committee of the society or by any aggrieved person. It is clear that by virtue of second proviso to Sub-section (2) of Section 19, the Board who has inducted him as a member, has a right to approach the Registrar for removal of a person from his membership. When a statute confers a power and duty of deciding and determining admission to the membership of the society, the deciding or determining of which affects the right of the subject, such decision or determination made and communicated in terms which are not expressly preliminary or provisional, shall be final and conclusive and cannot, in the absence of express statutory power, or the consent of person affected, be altered or withdrawn by that body. No statutory power is brought to our notice whereunder it can be said that the committee has power to revoke its own decision. The statutory power to remove a member is vested with the Registrar under the second proviso to Sub-section (2) of Section 19 of the Act. Second proviso to Sub-section (2) of Section 19 of the Act further fortifies our view, that the decision once taken by the Board of Directors for induction of the members, attains finality and the membership of the society cannot be revoked or rescinded by the Committee itself. Sub-section (3)(i) and (ii) gives right to file an appeal against the refusal or against the deemed refusal to the Registrar. When a member is admitted to the membership of the society, it has no right of filing an appeal against the order inducting person as a member but when he has been refused membership or there is a deemed refusal, there is a right of appeal only against refusal of membership, which indicates that the decision taken by the committee for the induction of a member is final so far as the committee is concerned. The words used in the second proviso to Sub-section (2) of Section 19 "notwithstanding anything to the contrary contained in this Act" are wide enough to cover the case of eligibility of the members concerned on account of illegal acceptance of their membership and shall not be restricted only to the eligibility as referred to u/s 19(1) or Clause (9) of bye law or Rule 14(2) or Rule 16 of Rajasthan Cooperative Societies Rules, 1966 (for short "the Rules"), which lays down and prescribes eligibility, procedure to be followed for admission to the membership and disqualification for membership.

11. In this reference submission of Mr. Sa'ngeet Lodha, that power to rescind resolution of Board of Directors can only be exercised u/s 32 of the Act, requires consideration. Under S. 32 Registrar is a repository of power of general

superintendence of the co-operative societies" interest. The resolution passed by co-operative society or committee, if in the opinion of the Registrar is opposed to the object of the society or is prejudicial to the interest of the society or is in excess of the powers of the society, the Registrar can intervene and rescind that resolution in whole or in part specifying reasons thereof. This power is a general power which can be exercised by the Registrar as regards to any resolution passed by society or its committee, whereas resolution by the Board of Directors relating to induction of or rejection of the member of the society, is a matter which can be decided by the Registrar u/s 19(2), second proviso or u/s 19(3)(i) (ii) of the Act. Powers under second proviso can be exercised suo motu by the Registrar. For exercise of the powers u/s 32 sine qua non is, resolution, opposed to object, prejudicial to interest, or is in excess of powers of the society. There may be a case when wholesale induction of large number of members to the membership of the society is prejudicial to the interest of the society in general, or even induction of single member is so, the Registrar can exercise powers u/s 32 of the Act but the zone of exercise of power depends on larger interest of the society in mind and not individual eligibility of the member or Board of Directors right to induct member. In any case, in either of eventualities, the power vests with the Registrar and not with Board of Directors.

12. Learned counsel for the respondent-Bank relied upon decision of Supreme Court reported in Shri Parmeshwari Prasad Gupta Vs. The Union of India (UOI), for his submission that the Board of Directors has an authority to rescind its own resolution in a subsequent meeting. In that case, service of the General Manager of the Fire Insurance Company was terminated by the Chairman in pursuance of the resolution passed by Board of Directors in its meeting dated 16-12-1953. The resolution was passed terminating the service was held to be invalid because of validity of meeting for want of notice to all the Directors. In a subsequent meeting the Board rectified the action of the Chairman terminating the service of Managing Director and Court held that it was open to a regularly constituted meeting of the Board of Directors to rectify the action of the Chairman. The action of the Chairman was independently rectified by the Board. It is not an authority on the point that resolution passed by the Board creating right in third party can be nullified in subsequent meeting.

13. For the aforesaid reasons, we are of the view that the induction of members in a meeting held on 5-2-1994 has become final so far as the society is concerned. The society become functus officio after passing of the resolution inducting members and it is for any person or the Board of Directors, who is aggrieved from the admission of the members to take proceedings before the Registrar for removal of the person admitted to such membership.

14. It is then contended by the counsel for the respondents that the holding of the meeting of 5-2-1994 was per se illegal, as once the meeting was postponed by the Managing Director sine die, the meeting could not have been held on 5-2-1994 under the directions issued by the" Chairman. The meeting once

adjourned can only be called with at least eight days" prior notice to the members of the Board of Directors as per bye law 34 of the Bye Laws of the Society. And further the meeting held on 5-2-1994 was attended only by three elected members of the Bank as three previously co-opted members were not eligible to attend and vote in the meeting and in the absence of quorum, the meeting could not have been proceeded. No resolution could have been passed. The induction of the members in the meeting held on 5-2-1994 is void ab initio.,

15. The meeting of the Board of Directors of the respondent-Bank was scheduled to be held on 5-2-1994 and for the said purpose, a notice was issued on 24-1-1994 by the Managing Director of the respondent-Bank. On 29-1-1994 certain Directors made representation for cancellation of the meeting scheduled to be held on 5-2-1994. In the said representation, it is, inter alia, stated that the co-opted members have been invited in the meeting and that the co-opted members of the Bank had no right of vote in the meeting of the Board of Directors. The Deputy Registrar, Co-operative Societies, Jodhpur, issued a letter dated 4-2-1994 directing the Managing Director of the respondent-Bank to postpone the meeting and consequently by notice dated 4-2-1994, the said meeting was postponed. No date was fixed for holding of further meeting. The information to that effect was sent to the members of the Board of Directors on 4-2-1994. However, on 5-2-1994, under the directions of the Chairman of the respondent-Bank. Shri K.M. Jain, the Managing Director issued a notice on 5-2-1994 whereby the members of the Board of Directors were informed that the meeting dated 5-2-1994 will be held as per the agenda at the time already fixed. The notice for holding the meeting on 5-2-1994 was issued by "the Managing Director on 24-1-94. The Managing Director had issued the notice to all the members of the Board of Directors vide Annex. R/3 dated 4-2-1994 that the meeting is postponed. Thereafter the information was sent that the meeting shall be held as it was fixed on 5-2- 1994, therefore, it is clear that meeting was postponed and thereafter postponement was cancelled.

16. Under the bye laws of the Society, it is . the Chief Executive Officer i.e. Managing Director, who is authorised to convene meetings. Bye law 34 provides for notice of the meeting according to which, the notice of meeting to the Board of Directors together with agenda of the meeting and the detail notes thereon, shall be sent to all the Directors at least eight days prior to the date of the meeting. Once the meeting is adjourned without giving any date for further meeting, the next meeting called shall be a fresh meeting and not the continuation of the meeting, which was previously called. It is internal matter of the Society whether the meeting fixed could have been cancelled by the Managing Director without the permission of the Chairman, so far as the Directors are concerned, meeting stands postponed sine die. Managing Director being the authorised officer to convene a meeting, he can also cancel it. The meeting called on 5-2-1994 was postponed by the Managing Director. Once the meeting was postponed by the Managing Director on 4-2-1994, it could have only been called by eight days" clear notice to the members of the Board of

Directors. Therefore, meeting held on 5-2-1994 shall be treated as an independent meeting and not the meeting in continuation of any other meeting. As the meeting was held on 5-2-1994 without complying with the mandatory provision of eight days' clear prior notice, any resolution passed in that meeting has no legal sanctity and cannot be enforced.

17. The meeting held on 5-2-1994 was attended by six Directors, Shri K.M. Jain, Chairman; Shri K.N. Joshi, elected Director; Shri Rajesh Joshi, elected Director; Shri Devi Chand Bafna, co-opted Director; Shri K.C. Bhandari, co-opted Director; Dr. S.D. Khetani, co-opted Director. Three members were co-opted on 7-12-1991. By law 29(iii) of the Society was amended on 7-1-1993 which provides that in addition to the elected and nominated Directors, the Board of Directors may, if they so desire, co-opt two Directors from amongst persons connected with small scale and cottage industry, economists, financial and Banking experts and experienced corporators. However, they shall not have the right to vote in the meeting of the Board of Directors. By law 25 lays down that the co-opted Directors shall be co-opted every year. Previous to the amendment of the bye laws, the term of the co-opted Directors was up to the period of three years. The question arose as to what is the effect of the amendment in the bye law and the terms of the Directors already co-opted before the Division Bench of this Court in D. B. Civil Writ Petition No. 49/94, K.M. Jain v. State of Rajasthan and others and D. B. Civil Writ Petition No. 5766/93, Dr. S.D. Khetani v. State of Rajasthan and others and it has been held as under:--

"The only right which the co-opted members had, was to continue for a period up to which bye-laws permitted. When the bye-laws were amended w.e.f. January, 1993 and provided a term of one year for a co-opted member, such of the co-opted member who had already completed term of one year could not continue further. Those who had not completed term of one year, could continue only up to remaining period to complete one year. This is, of course, subject to Board's right to co-opt them again under the bye-laws."

Thus, under the bye law, the term of the co-opted member is only for one year. After the expiry of the period of one year, they no longer remain the co-opted members of the Board of Directors. One of the Directors, who had attended the meeting held on 5-2-1994 and voted Dr. S.D. Khetani was himself the petitioner. As the terms of the co-opted members, namely, Sarv Shri Devi Chand Bafna, K.C. Bhandari and Dr. S.D. Khetani had expired on the date of the meeting i.e. 5-2-1994, they had no right to attend the meeting. Under bye law 35 of the Society, the quorum prescribed for meeting is five Directors. The three co-opted members whose term having been expired do not constitute quorum. The word "quorum" denotes the number of members of any body of persons whose presence at a meeting is requisite in order that business may be validly transacted. This is a generally accepted principle that the business transacted at the meeting of which the quorum is not present, is invalid. In a meeting where the number of members present is below the required quorum, the meeting is

"inquate" and cannot validly conduct the business. In the meeting held on 5-2-1994, the requisite quorum required for the meeting was five, the three co-opted members were not the members of the Board of Directors on 5-2-1994 and, therefore, the resolution passed inducting 475 persons including the petitioner, is per se illegal because of want of quorum. The appellant does not acquire any right of membership by virtue of the resolution passed on 5-2-1994 along with 475 persons.

18. It is argued by Shri Joshi, learned counsel for the appellant that the co-opted Directors have all along treated and exercised power as Directors not only in the meeting held on 5-2-1994 but in the meeting of the Board of Directors held on 2-3-1994 where they have participated as members and, therefore, in spite of the decision of the Court declaring their term of office only of one year, they have performed the duties as de facto members and the official acts performed by them are governed under de facto doctrine. A strong reliance is placed on a decision of the Supreme Court reported in *Gokaraju Rangaraju Vs. State of Andhra Pradesh*, while considering the effect on the judgments pronounced by the Additional Sessions Judge on declaration of his appointment invalid, the Court has observed that the de facto doctrine is founded on good sense, sound policy and practical experience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. In *Central Bank of India v. C. Bernard* 1990 (6) SLR 29, the Supreme Court had held as under:--

"It, therefore, seems clear to us that the de facto doctrine can be invoked in cases where there is an appointment to office which is defective; but notwithstanding the defect to the title of the office, the decisions made by such a de facto officer clothed with the powers and functions of the office would be as efficacious as those made by a de jure officer. The same would, however, not be true of a total intruder or usurper of office."

From the principle propounded by the apex Court, it is indicated that the doctrine de facto will apply only where the office holder has colourable authority or some colour of title in the appointment. The acts of the office holder may be held to be valid in law even though his own appointment is invalid and in truth he has no legal authority and in such a case he shall be an officer de facto as opposed to an officer de jure. Can it be said that the co-opted Directors were co-opted Directors on 5-2-94 although invalidly co-opted ? Three Directors were co-opted on 7-12-1991, by virtue of the amendment of the bye laws from 7-1-1993 reducing the terms of co-opted members, they ceased to be co-opted members on completion of one year. Nothing is brought to our notice whereby it can be held that they were re-co-opted as Directors. When they were not re-co-opted, their status is not more than intruder or usurper. Argument that they shall be Directors under the de facto doctrine till the decision rendered by the Court in Writ Petition no. 49/94 decided on 15-4-1994 is fallacious as the judgment only declares the law on the interpretation of the provision and the provision shall always be so read, from its inception, as interpreted by the Court.

19. The other question raised that the appellant should not be given the relief as he has suppressed the material facts and that the order passed in the subsequent meeting held "on 2-3-1994 whereby the resolution passed in the meeting held on 5-2-1994 was rescined having not filed, the appellant is not entitled to any relief and that when the persons" individual rights are in question, the public interest litigation, for and on behalf of the other person should not be entertained, need not be gone into, as we have already held that the resolution passed in the meeting held on 5-2-1994 was per se illegal and the resolution passed in that meeting inducting the members does not confer any right of membership in those members inclusive of the appellant.

20. For the reasons stated above, the appeal is dismissed with costs of Rs. 1500/-. The stay granted by this Court staying the counting and declaration of the result, is vacated.